

**WAUKESHA COUNTY BOARD OF ADJUSTMENT  
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, February 25, 2004, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

**BOARD MEMBERS PRESENT:** James Ward, Chairman  
Robert Bartholomew  
Paul Schultz  
Mary Voelker  
Walter Tarmann

**BOARD MEMBERS ABSENT:** None

**SECRETARY TO THE BOARD:** Amy A. Barrows  
Peggy Pelikan

**OTHERS PRESENT:** Town of Merton Board of Adjustment  
Sandy & Mike Schick, BA04:006, petitioner's parents  
Vivian Dentinger, BA04:005, petitioner  
Wayne Salentine, BA04:004, agent  
Tom Imme, BA04:004, petitioner  
Rick Russart, BA04:006, petitioner  
Dan Schick, BA04:006, petitioner  
Bob Sivak, BA04:007, petitioner  
Jeff Tredo, BA04:003, Architect  
Carmon & Keith Hill, BA04:003, petitioners  
Jim Ellingson, BA03:101, builder

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

**SUMMARIES OF PREVIOUS MEETINGS:**

Mr. Tarmann *I move we approve the Summary of the Meeting of February 11, 2004.*

The motion was seconded by Ms. Voelker and carried unanimously.

**NEW BUSINESS:**

**BA04:004 THOMAS IMME**

Ms. Voelker

*I make a motion to adopt the staffs recommendation for denial of the Variance request on Lot 75 and conditional approval of the Variance request on Lot 74 with the conditions stated in the Staff Report and for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Schultz and carried unanimously.

The staff's recommendation was for denial of the Variance request on Lot 75 and conditional approval of the Variance request on Lot 74, with the following conditions:

1. Any structures on Lot 74, including appurtenances such as decks, patios and pools, be located at least 45 ft. from the wetland boundary and 50 ft. from the established road right-of-way, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located the additional distance from the wetland and road as the overhangs exceed two (2) ft. in width.
2. A Zoning Permit shall be issued prior to any construction. All information required for a Zoning Permit shall be submitted, reviewed and approved by the Waukesha County Department of Parks and Land Use prior to the issuance of the Permit. A Grading, Drainage and Erosion Control Plan shall be submitted for review and approval, prior to the issuance of a Permit.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of the request for a Variance on Lot 74, with the recommended conditions, is not contrary to the public interest, and will permit a reasonably sized residence to be constructed. Granting a variance to permit the conservancy/wetland setback to be reduced to 45 feet will allow the applicants to maintain a buffer zone between the residence and the wetland while not encroaching on the road setback. The applicant would not be able to construct a residence on the lot without the benefit of a Variance, which does cause a hardship. The approval of this request with the recommended conditions would minimize the adverse affects on the adjacent wetland to the greatest extent possible while allowing reasonable use of the property. The neighboring properties would not be adversely affected. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

However, granting a Variance on Lot 75 would be contrary to the public interest and would not be within the spirit and intent of the Ordinance. It has not been demonstrated, as required for a Variance, that denial of the requested Variance on Lot 75 would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where, in the absence of a variance, no reasonable use can be made of the property. There is a significant building envelope available on Lot 75 without encroaching on any setbacks. The petitioner is proposing an

approximately 6,000 sq. ft. building envelope not including the proposed areas for a deck and pool or a mound system. A residence could be designed on the lot, which would allow a reasonably sized residence and include a deck and pool without the need for any variances, even though decks and pools are considered accessory structures and are not necessary to obtain reasonable use of a property. Therefore, the approval of this request would not be conformance with the purpose and intent of the Ordinance.

**BA04:005 VIVIAN J. DENTINGER**

Mr. Tarmann

*I make a motion to adopt the staff's recommendation, with the conditions stated in the Staff Report and for the reasons stated in the Staff Report. Condition No. 6 should read "Planning and Zoning Division staff" rather than "our Department".*

The motion was seconded by Ms. Voelker and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. If any changes to the existing grade are proposed, a detailed Grading and Drainage Plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the proposed detached garage does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete Vegetative Plan including seeding mixtures and amount of topsoil and mulch, an Erosion and Sediment Control Plan and the impact of any grading on stormwater and drainage.
2. The garage must contain only one story and it must conform with the height requirement of the Ordinance, i.e. the height of the garage, as measured half way between the peak of the roof and the eaves, must not exceed 15 ft.
3. An elevation rendering of the proposed detached garage must be submitted, reviewed and approved by Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.
4. The proposed detached garage must be located at least 20 ft. from the side lot line and 50 ft. from the platted road right-of-way (32 ft. from the established road right-of-way), as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located the additional distance from the side lot line and road as the overhangs exceed two (2) ft. in width.

5. Prior to the issuance of a Zoning Permit, a Stake-Out Survey showing the location of the proposed detached garage and all existing structures, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
6. The after-the-fact Conditional Use Permit must be issued by our Department prior to the issuance of a Zoning Permit for the detached garage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The proposed garage is located approximately 41 ft. further from the road than the existing garage. The proposed placement of the garage will ensure that the topography and wooded areas are preserved to the greatest extent possible. The garage, as approved, would be located 50 ft. from the platted road right-of-way and would not negatively impact the general desirability of the neighborhood since the established road right-of-way could potentially be reduced in width to the platted road right-of-way and if not, it is unlikely the Town would physically increase the width of the platted road right-of-way to the width of the established road right-of-way. Therefore, the approval of the above request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

**BA04:006 OKAUCHEE LAKE LIONS INC.**

Mr. Bartholomew

*I make a motion to adjourn the meeting until March 10, 2004 to request input from Waukesha County Corporation Counsel regarding the February 9, 2004 letter by Richard A. Bolte, Director of the Department of Public Works and the concerns that Staff has brought forth in their Staff Report. The Board would also like advice from the Corporation Counsel as to whether a Declaration of Restrictions could be recorded in the Register of Deeds office regarding insurance liability and the responsibility of the Okauchee Lion's Club in the event an injury would occur or maintenance would be required within the public road right-of-way. Corporation Counsel should advise as to what liability the County has by allowing a Variance request within the road right-of-way. The Conditional Use request is currently pending with the Town of Oconomowoc and the Board would also like to wait for the Town's action.*

The motion was seconded by Ms. Voelker and carried unanimously.

**BA04:007 POOLSIDE LLC (Chris Sivak)**

Mr. Schultz

*I make a motion to adopt the staff's recommendation, with the conditions stated in the Staff Report and for the reasons stated in the Staff Report.*

The motion was seconded by Ms. Voelker and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The sign must not be located any closer than 50 ft. from the established road right-of-way of S.T.H. "59".
2. The sign must not exceed 12 ft. in height, and the face of the sign shall not exceed 30 sq. ft. in size as proposed.
3. If the design of the sign changes from the design submitted to the Planning and Zoning Division staff, see attached (Exhibit "A"), a new design must be reviewed and approved by the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.
4. Prior to the issuance of a Zoning Permit, a scaled Site Plan showing the location of the proposed sign, in conformance with the above conditions, must be prepared by a registered land surveyor, landscape architect or engineer and submitted to the Planning and Zoning Division staff for review and approval.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Approval of the requested Variance, with the recommended conditions, allows the petitioner reasonable use of the property while maintaining the spirit and intent of the Ordinance. The property is located in a business district where signs are expected and needed to attract retail business. S.T.H. "59" incorporates a higher volume of traffic at higher speeds than local roads, therefore, a larger illuminated sign would be required to attract attention to the operation. The sign as proposed complies with the road setback and should not impact the safety of traffic on S.T.H. "59". In fact, structures are required to maintain a greater road setback on state highways than local roads and as a result it is only reasonable to allow a larger sign to compensate for the distance as well as the grade difference between the site and S.T.H. "59". The site is well above the grade of S.T.H. "59". Therefore, the request as conditioned will not adversely affect the surrounding property owners and would not be contrary to the public interest, and therefore is in conformance with the purpose and intent of the Ordinance

**BA04:003 KEITH AND CARMON HILL**

Mr. Schultz

*I make a motion to adopt the staff's recommendation, with the conditions stated in the Staff Report and for the reasons stated in the Staff Report.*

The motion was seconded by Ms. Voelker and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a Sanitary Permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
2. Prior to the issuance of a Zoning Permit, a complete set of Building Plans, interior and exterior elevation renderings, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
3. The proposed addition must not be located any closer to the shoreline than the existing structure, as measured above and as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located the additional distance from the side lot line and road as the overhangs exceed two (2) ft. in width.
4. Prior to the issuance of a Zoning Permit, a Stake-Out Survey showing the location of the proposed addition and any appurtenances, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
5. A detailed Grading and Drainage Plan, showing existing and proposed grades must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the proposed addition does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete Vegetative Plan including seeding mixtures and amount of topsoil and mulch, **an Erosion and Sediment Control Plan**, and the impact of any grading on stormwater and drainage. **No retaining walls are permitted**

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Approval of the requested variances and special exception, with the recommended conditions, allows the petitioner reasonable use of the property, while maintaining the spirit and intent of the Ordinance. The addition, as proposed, will not cause additional negative impact to the natural resources in the area or the surrounding properties since the addition is not proposed any closer to the shoreline than the existing structure and is significantly higher topographically than the 100-yr. floodplain. As conditioned, proper erosion and sediment controls must be made during construction. The residence is non-conforming due to the physical characteristics of the property, having shoreline on 3 of the 4 sides of the property. A residence could not be constructed on this property without variances from the shoreline and 100-yr. floodplain setback requirements. The petitioner's have proposed to construct the addition long and narrow to maintain the greatest setbacks possible. Therefore, the proposal would be in conformance with the spirit and intent of the Ordinance.

**OTHER ITEMS REQUIRING BOARD ACTION:**

**BA03:101 JAMES ELLINGSON/Ellingson Builders, Inc. (Lawrence F. Schmidt-Owner)**

Ms. Voelker

*I make a motion to amend Condition No. 3 of the Decision Sheet, dated November 13, 2003, to allow 22% floor area ratio and 9,400 sq. ft. of open space rather than 19.5% floor area ratio and 9,500 sq. ft. of open space. The revised condition shall read, "The residence and attached garage shall not exceed a total of 2,425.5 sq. ft., or 22% floor area ratio. No other structures shall be permitted on the property, which would result in an overall floor area ratio exceeding 22%. The footprint of the residence and attached garage shall not exceed 1,625 sq. ft., allowing 9,400 sq. ft. of open space to remain. The revision is made for the reason of being consistent with past Board of Adjustment decisions on neighboring properties and on other properties in the County. In today's standards, the additional floor area is needed to allow reasonable use of the property.*

The motion was seconded by Mr. Ward and carried with 4 yes votes. Mr. Schultz voted against the motion.

**ADJOURNMENT:**

Mr. Bartholomew

*I move we adjourn this meeting at 9:15 p.m.*

The motion was seconded by Mr. Tarmann and carried unanimously.

Respectfully submitted,

Amy A. Barrows  
Secretary, Board of Adjustment